APPENDIX.

Title 12 U. S. C.
Sec. 64.

"INDIVIDUAL LIABILITY OF SHAREHOLDERS; TRANSFER OF SHARES. The stockholders of every national banking association shall be held individually responsible for all contracts, debts, and engagements of such association, each to the amount of his stock therein, at the par value thereof in addition to the amount invested in such stock. The stockholders in any national banking association who shall have transferred their shares or registered the transfer thereof within sixty days next before the date of the failure of such association to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent as if they had made no such transfer, to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way any recourse which such shareholders might otherwise have against those in whose names such shares are registered at the time of such failure. (Dec. 23, 1913, c. 6, § 23, 38 Stat. 273.)" U. S. Code Annotated, Tit. 12.

Title 12 U. S. C.
Sec. 194.

DIVIDENDS ON ADJUSTED CLAIMS; Distribution of Assets.

From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been

proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held (R. S. § 5236).

***Garvy, Recr., etc.*, vs. *Wilder, et al.*, 121 Fed. (2d) 714.**

(Italics supplied.)

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division; Michael L. Igoe, Judge.

Action by W. J. Garvy, receiver of the Waukegan National Bank, against Josie B. Wilder and another, to collect interest on an assessment made by the Comptroller of Currency against the defendants, who were owners of stock in the Waukegan National Bank, which failed June 18, 1931. From a judgment for defendants, the plaintiff appeals.

Affirmed.

Before EVANS and KERNER, Circuit Judges, and BRIGGLE, District Judge.

This action was brought to collect interest on an assessment made by the Comptroller of Currency against two owners of stock of the Waukegan National Bank, which failed June 18, 1931. The Comptroller levied a one hundred percent assessment payable "by September 29, 1932." The two stockholders paid the face of the assessment, August 11, 1936, but denied liability for interest thereon. The suit was begun in February, 1940, more than five years after the assessment.

When the defendants paid their assessments two receipts were given, alike in all respects, save the amount and number of shares. Herewith is a copy of one receipt:

"Waukegan, Ill. August 11th, 1936

"Received from Josie B. Wilder Three Thousand and no/100 ..... Dollars In full payment of the principal amount of her stock assessment on thirty (30) shares of capital stock of The Waukegan National Bank. *Interest on said principal amount of said assessment still remaining due and unpaid.*

"The Waukegan National Bank
"Melvin B. Ericson, Receiver
"$3,000.00 Per Ellen Yager"

Judgment was entered for the defendants and the complaint was dismissed.

Evans, Circuit Judge.

Plaintiff relies chiefly on Casey *v.* Galli, 94 U. S. 673, 24 L. Ed. 168. He also asserts that a statutory bank stock liability is contractual in nature and that the Illinois statute provides (R. S. '39, Chap. 74, Sec. 2) for accrual of interest at 5% on liquidation of accounts and that the declaration of an assessment's due date is the equivalent of the settlement of accounts.

Appellees contend that the Federal statutory obligation for a national bank assessment does not draw interest; that no action may be maintained for interest where the principal has been satisfied by payment in full; that the Illinois decisions (in which state this action was brought) do not permit recovery of interest on Illinois bank stockholder's liability; that the interest liability herein, if any existed, is barred by the Illinois statute of limitations. Smith-Hurd Stats. c. 83, § 16.

The National Banking Act, 12 U. S. C. A. § 64, made no mention of interest on bank stockholders' assessments. It provided:

"The stockholders of every national banking association shall be held individually responsible for all * * * debts * * * of such association * * * to the amount of his stock therein, at the par value thereof * * *."

The Illinois decisions hold that there is no liability for interest on stockholders' assessments. Munger *v.* Jacobson, 99 Ill. 349. Also, there is a general rule of law widely accepted, to the effect that a liability created by a statute does not draw interest. Corpus Juris, Vol. 17, p. 823, Sec. 144, states the rule as follows:

"*Actions based on statutes.* Where the right of action is given by statute and the measure of damages is fixed, interest cannot be allowed unless provided for by the statute. So where the damages are in the nature of a penalty fixed by statute without any reference to fault or neglect on the part of defendant, interest should not be allowed."

Notwithstanding this rule and the cases supporting it, we are convinced, and so hold, that, *under the federal authorities, interest liability attaches to national bank stock assessments.* Casey *v.* Galli, 94 U. S. 673, 24 L. Ed. 168; Bowden *v.* Johnson, 107 U. S. 251, 2 S. Ct. 246, 27 L. Ed. 386; 7 Amer. Juris., Banks § 100.

In Casey *v.* Galli [94 U. S. 677, 24 L. Ed. 168], the court said:

"The defendant demurred to the declaration, and assigned the following causes:— * * *

"4. That the declaration demands a larger sum than the defendant is required by the statute to pay, and also an additional sum by way of interest. * * *

"The sum to be paid being liquidated, and due and payable when the comptroller's order was made, it follows

that the amount bears interest from the date of the order. Otherwise there would be no motive to pay promptly, and no equality between those who should pay then and those who should pay at the end of a protracted litigation."

In Bowden *v.* Johnson [107 U. S. 251, 2 S. Ct. 256, 27 L. Ed. 386], the court concluded the opinion by stating:

"The liability of the defendant bears interest from the date of said letter, August 13, 1875," citing Casey *v.* Galli.

Liability for interest on a national bank stock assessment must be determined by the decisions of the Federal courts. It is not controlled by state court construction of state statutes which impose a liability on holders of stock in closed insolvent state banks.

Interest liability attaches on the day the assessment was made payable. *Rawlings* v. *Ray, 61 S. Ct. 473, 58 L. Ed.* ——, decided by the Supreme Court February 3, 1941. In this case the cause of action accrued, September 29, 1932.

Two questions are definitely closed by the decision of Rawlings, Receiver *v.* Ray, supra. The first one is that the statute of limitations of Illinois is applicable. Supporting this holding are McDonald *v.* Thompson, 184 U. S. 71, 22 S. Ct. 297, 46 L. Ed. 437, and McCline *v.* Rankin, 197 U. S. 154, 25 S. Ct. 410, 49 L. Ed. 702, 3 Ann. Cas. 500. The second question determined the same decision fixes the date when the assessment accrues, as the date fixed by the Comptroller for its payment. The date of maturity of the cause of action is a Federal question. In other words, in this case the cause of action on the assessment accrued, September 29, 1932.

Rather unsettled, and in dispute, is defendants' contention that payment of the principal extinguished any interest that might otherwise accrue where the obligation for the indebtedness is imposed by state or Federal statute.

This court in Graves *v.* Saline County, 7 Cir., 104 F. 61, announced the rule which denied the right to recover interest after acceptance of the principal.

In view of the holding in Erie R. v. *Tompkins,* 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, 114 A. L. R. 1487, *our decision must now be overruled or limited in its effect to those states where such denial of liability for interest is the law. For, in Illinois, where this bank was located and where this action was begun, a contrary conclusion has been reached.* Feldman *v.* City of Chicago, 363 Ill. 247, 254, 2 N. E. 2d 102; Northwestern Yeast Co. *v.* City of Chicago, 301 Ill. App. 303, 309, 22 N. E. 2d 781.[1]

It is apparent therefore that (a) the assessment drew interest; (b) the collection of interest was not defeated by the payment of the assessment (without interest) in full; and (c) the Statute of Limitations of Illinois governs.

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The judgment is affirmed.

Petition for re-hearing denied.

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[1] See also Blaine *v.* City of Chicago, 366 Ill. 341, 8 N. E. 2d 939.